

245.7311-2

245.7311-2 Safety, security, and fire regulations.

245.7311-3 Bid deposits.

245.7311-4 Other special conditions.

Other special conditions considered necessary by the Contractor are subject to the prior approval of the plant clearance officer. Approval will normally be granted provided the prescribed conditions of sale are not altered or affected and the interest of the Government is not adversely affected.

PART 246—QUALITY ASSURANCE

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36460, July 31, 1991, unless otherwise noted.

Subpart 246.1—General

246.101 Definitions.

Metrology is the science of weights and measures used to determine conformance to technical requirements including the development of standards and systems for absolute and relative measurements.

Quality means the composite of material attributes including performance features and characteristics of a product or service to satisfy a given need.

Quality assurance is a planned and systematic pattern of all actions necessary to provide adequate confidence that adequate technical requirements are established; products and services conform to established technical requirements; and satisfactory performance is achieved.

Quality audit is a systematic examination of the acts and decisions with respect to quality in order to independently verify or evaluate the operational requirements of the quality

program or the specification or contract requirements of the product or service.

Quality program is a program which is developed, planned, and managed to carry out cost-effectively all efforts to effect the quality of materials and services from concept exploration and definition through demonstration and validation, engineering and manufacturing development, production and deployment, and operations and support.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995]

246.102 Policy.

Departments and agencies shall also—

(1) Develop and manage a cost effective quality program to ensure that contract performance conforms to specified requirements. Apply the quality program to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

(2) Conduct quality audits to ensure the quality of products and services meet contractual requirements.

(3) Base the type and extent of Government contract quality assurance actions on the particular acquisition.

(4) Provide contractors the maximum flexibility in establishing efficient and effective quality programs to meet contractual requirements. Contractor quality programs may be modeled on military, commercial, national, or international quality standards.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995]

246.103 Contracting office responsibilities.

The contracting office may conduct product-oriented surveys and evaluations to determine—

(1) The adequacy of the technical requirements relating to quality; and

(2) Product conformance to design intent. Consider conducting the surveys and evaluations in conjunction with the activity responsible for technical requirements.

(a) Contracting offices are also responsible for—

(i) Assisting the technical activity in improving the quality requirements for

contracts when first identified for competitive acquisition; and

(ii) Assisting in determining the cause of problems noted in user experience reports.

(b) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(c) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements.

(i) In preparing the instructions, the technical activity shall consider, as applicable—

(A) The past quality history of the contractor;

(B) The criticality of the material procured in relation to its intended use, considering such factors as—

(1) Reliability;

(2) Safety;

(3) Interchangeability; and

(4) Maintainability;

(C) Problems encountered in the development of the material;

(D) Problems encountered in other procurements of the same or similar material;

(E) Available feed-back data from contract administration, receiving, testing, or using activities; and

(F) The experience of other contractors in overcoming manufacturing problems.

(ii) The instructions shall—

(A) Be kept to a minimum;

(B) Comply with 246.470-2; and

(C) Be prepared on a contract-by-contract basis.

(iii) The instructions shall not—

(A) Serve as a substitute for incomplete contract quality requirements;

(B) Impose greater inspection requirements than are in the contract;

(C) Use broad or general designations such as—

(1) All requirements;

(2) All characteristics; or

(3) All characteristics in the classification of defects;

(D) Be used for routine administrative procedures; or

(E) Specify continued inspection requirements when statistically sound

sampling will provide an adequate degree of protection.

(iv) After issuing the instructions, the technical activity—

(A) Must provide the contract administration office available information regarding those factors which resulted in the requirement for Government inspection;

(B) Must periodically analyze the need to continue, change, or discontinue the instructions; and

(C) Must advise the contract administration office of the results of the periodic analyses.

246.104 Contract administration office responsibilities.

(f) The contract administration office shall continue to follow any specific written instructions received from the contracting office until the contracting office acts on a recommendation.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202–4 Higher-level contract quality requirements.

(1) Higher-level contract quality requirements are used in addition to a standard inspection requirement.

(2) Higher-level contract quality requirements, including nongovernment quality system standards adopted to meet DoD needs, are listed in the DoD Index of Specifications and Standards.

[60 FR 33145, June 27, 1995. Redesignated and amended at 60 FR 61599, Nov. 30, 1995]

246.203 Criteria for use of contract quality requirements.

(c) *Criticality.* Acquisitions of critical items, whether peculiar or common, shall have contract quality requirements.

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

(a) Use the clause at 252.246–7000, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct

deliverables, even if the deliverables are not separately priced.

(b) When contract administration is retained by the contracting office, the clause at 252.246–7000, Material Inspection and Receiving Report, is not required for—

(1) Contracts awarded using small and other simplified purchase procedures (FAR part 13);

(2) Negotiated subsistence contracts;

(3) Contracts for fresh milk and related fresh dairy products;

(4) Contracts for which the deliverable is a scientific or technical report;

(5) Research and development contracts not requiring the delivery of separately priced end items;

(6) Base, post, camp, or station contracts;

(7) Contracts in overseas areas when the preparation and distribution of the DD Form 250, Material Inspection and Receiving Report, by the contractor would not be practicable. In these cases, arrange for the contractor to provide the information necessary for the contracting office to prepare the DD Form 250;

(8) Contracts for services when hardware is not acquired as an item in the contract; and

(9) Indefinite delivery type contracts placed by central contracting offices which authorize only base, post, camp, or station activities to issue orders.

Subpart 246.4—Government Contract Quality Assurance

246.406 Foreign governments.

(1) *Quality assurance among North Atlantic Treaty Organization (NATO) countries—*(i) *NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance.* (A) STANAG 4107—

(1) Contains procedures, terms, and conditions under which one NATO country will perform quality assurance for another NATO country, or for a NATO organization.

(2) With certain reservations, has been ratified by the U.S. and other nations in NATO.

(B) Departments and agencies—

(1) May ask NATO countries to perform quality assurance;

(2) Shall perform quality assurance when requested by a NATO country.

(C) The U.S. Government reserves the right to require reimbursement for work it performs for other NATO countries and organizations.

(ii) *NATO Standardization Agreement (STANAG) 4108, Allied Quality Assurance Publications*. (A) STANAG 4108 provides for the application of Allied Quality Assurance Publications (AQAPs).

(B) Its annexes list AQAPs and the criteria for applying those AQAPs which are required in contracts between NATO countries.

(2) *International military sales (non-NATO)*. Departments and agencies shall—

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Ensure conformance to the technical and quality requirements of international military sales contracts;

(iii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications;

(iv) Specify appropriate quality requirements in contracts awarded to other countries; and

(v) Delegate quality assurance to the host government when satisfactory services are available.

(3) *Reciprocal quality assurance agreements*. A Memorandum of Understanding (MOU) with a foreign country may contain an annex that provides for the reciprocal performance of quality assurance services. MOUs should be checked to determine whether such an annex exists for the country where a defense contract will be performed. (See subpart 225.74 for more information about MOUs.)

246.407 Nonconforming supplies or services.

(1) Contracting officers shall use the following MIL-STD-109 definitions in determining conformance with contract requirements—

(i) *Critical nonconformance* is a nonconformance that judgment and experience indicate—

(A) Is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or

(B) Is likely to prevent performance of a vital agency mission.

(ii) *Major nonconformance* is a nonconformance, other than critical, that is likely to result in failure, or to materially reduce the usability of the supplies or services for their intended purpose.

(iii) *Minor nonconformance* is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

(2) Contracting officers shall ensure that—

(i) Nonconformances are identified; and

(ii) The significance of a nonconformance is established when considering the acceptability of supplies or services which do not meet contract requirements.

(f) If nonconforming material or services are discovered after acceptance, the defect appears to be the fault of the contractor, any warranty has expired, and there are no other contractual remedies, the contracting officer—

(i) Shall notify the contractor in writing of the nonconforming material or service;

(ii) Shall request that the contractor repair or replace the material, or perform the service, at no cost to the Government; and

(iii) May accept consideration if offered. For guidance on solicitation of a refund, see subpart 242.71.

246.408 Single-agency assignments of Government contract quality assurance.

246.408-70 Subsistence.

(a) The Surgeons General of the military departments are responsible for—

(1) Acceptance criteria;

(2) Technical requirements; and

(3) Inspection procedures needed to assure wholesomeness of foods.

(b) The contracting office may designate any Federal activity, capable of assuring wholesomeness and quality in food, to perform quality assurance for subsistence contract items. The designation may—

- (1) Include medical service personnel of the military departments; and
- (2) Be on a reimbursable basis.

246.408-71 Aircraft.

(a) The Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with some commercial aircraft and of aircraft equipment and accessories (Pub. L. 85-726 (72 Stat 776, 49 U.S.C. 1423)). This includes the issuance of various certificates applicable to design, manufacture, and airworthiness.

(b) FAA evaluations are not a substitute for normal DoD evaluations of the contractor's quality assurance measures. Actual records of FAA evaluations may be of use to the contract administration office (CAO) and should be used to their maximum advantage.

(c) The CAO shall ensure that—

- (1) The supplies and services conform to the terms of the contract; and
- (2) The contractor possesses any required FAA certificates and approvals prior to acceptance.

246.408-72 Construction projects.

(a) The department or agency responsible for the construction of a building or other structure is normally responsible for on-site inspection.

(b) The contract administration office performs quality assurance for construction materials and supplies acquired for military and civil works projects.

(c) The offices responsible for on-site inspection and for quality assurance of materials and supplies must coordinate their efforts to ensure the compatibility of buildings and structures and installed equipment.

246.470 Government contract quality assurance actions.**246.470-1 Planning.**

In systematically planning Government contract quality assurance actions used to determine a contractor's compliance with contract quality requirements, consider—

- (a) The relative importance of the product; and
- (b) The variety of tasks required of the available resources.

246.470-2 Evidence of conformance.

Use objective evidence of quality to determine conformance to contract quality requirements.

246.470-3 Assessment of additional costs.

(a) Under the clause at FAR 52.246-2, Inspection of Supplies—Fixed-Price, the Government may charge the contractor for additional costs incurred by the Government due to delays in tests or inspections caused by the contractor, or due to the necessity for reinspection or retest. This action may be necessary when—

(1) Supplies are not ready at the time such inspection and test are requested by the contractor; or

(2) Reinspection or retest is necessitated by prior rejection.

(b) After considering the factors in paragraph (d) of this subsection, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative shall recommend that the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the applicable Federal agency, foreign military sale, or public rate in effect at the time of the delay, reinspection, or retest.

(c) If the contracting officer agrees with the QAR, the contracting officer shall—

(1) Notify the contractor, in writing, of the determination to exercise the Government's right under the clause at FAR 52.246-2, Inspection of Supplies—Fixed Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR subpart 32.6.

(d) In making a determination to assess additional costs, the contracting officer shall consider—

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

246.470-4 Maintenance of Government records.

The contract administration office shall maintain suitable records of the quality assurance performance of contractors.

246.470-5 Quality evaluation data.

The contract administration office shall establish a system that provides, as a minimum, for the collection, evaluation, and use of—

- (a) Quality data developed by the contractor during performance;
- (b) Data developed by the Government through contract quality assurance actions; and
- (c) Reports by users and customers.

246.471 Authorizing shipment of supplies.

(a) *General.* (1) Ordinarily, a representative of the contract administration office signs or stamps the shipping papers that accompany Government source-inspected supplies to release them for shipment. This is done for both prime and subcontracts.

(2) An alternative procedure (see paragraph (b) of this section) permits the contractor to assume the responsibility for releasing the supplies for shipment.

(3) The alternative procedure may include prime contractor release of supplies inspected at a subcontractor's facility.

(4) The use of the alternative procedure releases DoD manpower to perform technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative Procedures—Contract Release for Shipment.* (1) The contract administration office may authorize, in writing, the contractor to release supplies for shipment when—

(i) The stamping or signing of the shipping papers by a representative of the contract administration office interferes with the operation of the Government contract quality assurance program or takes too much of the Government representative's time;

(ii) There is sufficient continuity of production to permit the Government to establish a systematic and continuing evaluation of the contractor's control of quality; and

(iii) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

(2) The contract administration office shall withdraw, in writing, the authorization when there is an indication that the conditions in paragraph (b)(1) of this subsection no longer exist.

(3) When the alternative procedure is used, require the contractor to—

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s), or on an attachment—

The supplies in this shipment—

- 1. Have been subjected to and have passed all examinations and tests required by the contract;
- 2. Were shipped in accordance with authorized shipping instructions;
- 3. Conform to the quality, identity, and condition called for by the contract; and
- 4. Are of the quantity shown on this document.

This shipment was—

- 1. Released in accordance with section 246.471 of the Defense FAR Supplement; and
- 2. Authorized by (name and title of the authorized representative of the contract administration office) in a letter dated (date of authorizing letter). (Signature and title of contractor's designated official.)

(ii) Release and process, in accordance with established instructions, the DD Form 250, Material Inspection and Receiving Report, or other authorized receiving report.

246.472 Inspection stamping.

(a) There are two DoD quality inspection approval marking designs (stamps). Both stamps are used—

(1) Only by, or under the direct supervision of, the Government representative; and

(2) For both prime and subcontracts.

(b) The designs of the two stamps and the differences in their uses are—

(1) *Partial (Circle) Inspection Approval Stamp.* (i) This circular stamp is used to identify material inspected for conformance to only a portion of the contract quality requirements.

(ii) Further inspection is to be performed at another time and/or place.

(iii) Material not inspected is so listed on the associated DD Form 250 (Material Inspection and Receiving Report), packing list, or comparable document.

(2) *Complete (Square) Inspection Approval Stamp.* (i) This square stamp is used to identify material completely inspected for all contract quality requirements at source.

(ii) The material satisfies all contract quality requirements and is in complete conformance with all contract quality requirements applicable at the time and place of inspection.

(iii) Complete inspection approval establishes that material which once was partially approved has subsequently been completely approved.

(iv) One imprint of the square stamp voids multiple imprints of the circle stamp.

(c) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or routing tickets serves to adequately indicate the status of the material and to control or facilitate its movement.

(d) Stamping material does not mean that it has been accepted by the Government. Evidence of acceptance is ordinarily a signed acceptance certificate on the DD Form 250, Material Inspection and Receiving Report.

(e) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector shall use NASA quality status stamps in accordance with current NASA requirements.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document—

- (1) Contract quality assurance;
- (2) Acceptance of supplies and services; and
- (3) Shipments.

(b) MIRRs are used by activities responsible for—

- (1) Receiving;
- (2) Status control;
- (3) Technical requirements;
- (4) Contracting;
- (5) Inventory control;
- (6) Requisitioning; and
- (7) Payment.

246.671 Procedures.

See Appendix F, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of—

(a) The Material Inspection and Receiving Report (DD Form 250 series) and;

(b) Supplier's commercial shipping/packing lists used to evidence Government contract quality assurance.

Subpart 246.7—Warranties

246.701 Definitions.

Acceptance, as defined in FAR 46.701 and as used in this subpart and in the warranty clauses at FAR 52.246-17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246-18, Warranty of Supplies of a Complex Nature; FAR 52.246-19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246-20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

Defect, as used in this subpart, means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.702 General.

(c) Departments and agencies shall establish procedures to track and accumulate data on warranty costs.

246.703 Criteria for use of warranties.

The use of warranties in the acquisition of weapon systems is mandatory (10 U.S.C. 2403) unless a waiver is authorized (see 246.770-8).

(b) *Cost.* Contracting officers may include the cost of a warranty as part of an item's price or as a separate contract line item.

246.704 Authority for use of warranties.

The chief of the contracting office must approve use of a warranty, except in acquisitions for—

- (1) Weapon systems (see 246.770);

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(2) Commercial items (see FAR 46.709);

(3) Technical data, unless the warranty provides for extended liability (see 246.708);

(4) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (see 246.202-4); or

(5) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995; 60 FR 61599, Nov. 30, 1995]

246.705 Limitations.

(a) Warranties in the clause at 252.246-7001, Warranty of Data, are also an exception to the prohibition on use of warranties in cost-reimbursement contracts.

246.706 Warranty terms and conditions.

(b)(5) *Markings*. Use MIL Standard 129, Marking for Shipments and Storage, and MIL Standard 130, Identification Marking of U.S. Military Property, when marking warranty items.

246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

(1) Use a clause substantially the same as the clause at 252.246-7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227-7013, Rights in Technical Data and Computer Software, and there is a need for greater protection or period of

liability than provided by other contract clauses, such as the clauses at—

(i) FAR 52.246-3, Inspection of Supplies—Cost-Reimbursement;

(ii) FAR 52.246-6, Inspection—Time-and-Material and Labor-Hour;

(iii) FAR 52.246-8, Inspection of Research and Development—Cost-Reimbursement; and

(iv) FAR 52.246-19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(2) Use the clause at 252.246-7001, Warranty of Data, with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.

(3) Use the clause at 252.246-7001, Warranty of Data, with its Alternate II when extended liability is desired and a firm fixed price contract is contemplated.

(4) Use the clause at 252.246-7002, Warranty of Construction (Germany), in solicitations and contracts for construction when a fixed-price contract will be awarded and contract performance will be in Germany.

[56 FR 36460, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

246.770 Warranties in weapon system acquisitions.

This section sets forth policies and procedures for use of warranties in contracts for weapon system production.

246.770-1 Definitions.

As used in this section—

(a) *At no additional cost to the Government* means—

(1) At no increase in price for firm fixed price contracts;

(2) At no increase in target or ceiling price for fixed price incentive contracts (see also FAR 46.707); or

(3) At no increase in estimated cost or fee for cost-reimbursement contracts.

(b) *Design and manufacturing requirements* means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the weapon system being produced.

(c) *Essential performance requirements* means the operating capabilities and

maintenance and reliability characteristics of a weapon system that the agency head determines to be necessary to fulfill the military requirement.

(d) *Initial production quantity* means the number of units of a weapon system contracted for in the first program year of full-scale production.

(e) *Mature full-scale production* means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

(f) *Weapon system* means a system or major subsystem used directly by the Armed Forces to carry out combat missions.

(1) The term includes, but is not limited to, the following (if intended for use in carrying out combat missions)—

- (i) Tracked and wheeled combat vehicles;
- (ii) Self-propelled, towed and fixed guns, howitzers and mortars;
- (iii) Helicopters;
- (iv) Naval vessels;
- (v) Bomber, fighter, reconnaissance and electronic warfare aircraft;
- (vi) Strategic and tactical missiles including launching systems;
- (vii) Guided munitions;
- (viii) Military surveillance, command, control, and communication systems;
- (ix) Military cargo vehicles and aircraft;
- (x) Mines;
- (xi) Torpedoes;
- (xii) Fire control systems;
- (xiii) Propulsion systems;
- (xiv) Electronic warfare systems; and
- (xv) Safety and survival systems.

(2) The term does not include—

- (i) Commercial items;
- (ii) Spares, repairs, or replenishment parts; or
- (iii) Related support equipment (e.g., ground-handling equipment, training devices and accessories, ammunition), unless an effective warranty would require inclusion of such items.

246.770-2 Policy.

(a) Under 10 U.S.C. 2403, departments and agencies may not contract for the production of a weapon system with a unit weapon system cost of more than

\$100,000 or an estimated total procurement cost in excess of \$10 million unless—

(1) Each contractor for the weapon system provides the Government written warranties that—

(i) The weapon system conforms to the design and manufacturing requirements in the contract (or any modifications to that contract);

(ii) The weapon system is free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract; and

(iii) The weapon system, if manufactured in mature full-scale production, conforms to the essential performance requirements of the contract (or any modification to that contract); and

(2) The contract terms provide that, in the event the weapon system fails to meet the terms of the above warranties, the contracting officer may—

(i) Require the contractor to promptly take necessary corrective action (e.g., repair, replace, and/or redesign) at no additional cost to the Government;

(ii) Require the contractor to pay costs reasonably incurred by the Government in taking necessary corrective action, or

(iii) Equitably reduce the contract price; or

(3) A waiver is granted under 246.770-8.

(b) Contracting officers and program managers shall consider the following when developing and negotiating weapon system warranty provisions:

(1) Warranties may not be appropriate in all situations, and a waiver should be sought if a warranty would not be cost-effective or would otherwise be inconsistent with the national defense. In drafting warranty provisions, the drafters must ensure they understand the planned operational, maintenance, and supply concepts of the weapon system to be fielded, and must structure a warranty that matches those concepts. A warranty plan should be prepared in consonance with development of the warranty provision early in the weapon system's life cycle. The plan should contain program warranty strategy, terms of the warranty, administration and enforcement

requirements, and should be coordinated with the user and support activities.

(2) A cost/benefit analysis must be accomplished in support of each warranty (see 246.770-7). The cost/benefit analysis compares all costs associated with the warranty to the expected benefits. An estimate shall be made of the likelihood of defects and the estimated cost of correcting such defects. Also, if substantive changes are required to the planned operational, maintenance, or supply concepts, any increased costs should be weighed against the expected benefits in deciding whether a warranty is cost-effective.

(3) The Warranty Guidebook prepared by the Defense Systems Management College, Fort Belvoir, VA 22060-5426, is a valuable reference that can assist in the development, negotiation, and administration of an effective weapon system warranty.

(c) Contracting officers may require warranties that provide greater coverage and remedies than specified in paragraph (a) of this subsection.

(d) When the contract includes an essential performance requirement warranty, the warranty must identify redesign as a remedy available to the Government.

(1) The period during which redesign must be available as a remedy shall not end before operational use, operational testing, or a combination of operational use and operational testing has demonstrated that the warranted item's design has satisfied the essential performance requirements.

(2) When essential performance requirements are warranted in contracts with alternate source contractors, do not include redesign as a remedy available to the Government under those contracts until the alternate source has manufactured the first ten percent of the eventual total production quantity anticipated to be acquired from that contractor (see 246.770-5).

[56 FR 36460, July 31, 1991, as amended at 59 FR 7749, Feb. 29, 1996]

246.770-3 Tailoring warranty terms and conditions.

(a) Since the objectives and circumstances vary considerably among weapon system acquisition programs,

contracting officers must tailor the required warranties on a case-by-case basis. The purpose of tailoring is to get a cost-effective warranty in light of the technical risk, or other program uncertainties, while ensuring that the Government still acquires the basic warranties described in 246.770-2. Tailoring shall not be used as a substitute for acquiring a warranty waiver.

(1) Tailoring may affect remedies, exclusions, limitations, and duration provided such are consistent with the specific requirements of this section (see also FAR 46.706).

(2) Clearly relate the duration of any warranty to the contract requirements and allow sufficient time to demonstrate achievement of the requirements after acceptance.

(3) Tailor the terms of the warranty, if appropriate, to exclude certain defects for specified supplies (exclusions) or to limit the contractor's liability under the terms of the warranty (limitations).

(4) Structure broader and more comprehensive warranties when advantageous or narrow the scope when appropriate. For example, it may be inappropriate to require warranty of all essential performance requirements for a contractor that did not design the system.

(b) DoD policy is to exclude any terms that cover contractor liability for loss, damage, or injury to third parties from warranty clauses.

(c) Ensure acquisition of subsystems and components in a manner which does not affect the validity of the weapon system warranty.

246.770-4 Warranties on Government-furnished property.

Contracting officers shall not require contractors to provide the warranties specified in 246.770-2 on any property furnished the contractor by the Government, except for—

(a) Defects in installation;

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property; or

(c) Modifications made to the property by the contractor.

246.770-5 Exemption for alternate source contractor(s).

Agency heads may exempt alternate source contractor(s) from the essential performance warranty requirements of 246.770-2(a)(1)(iii) until that contractor manufactures the first ten percent of its anticipated total production quantity.

246.770-6 Applicability to foreign military sales (FMS).

(a) The warranty requirements of 246.770-2 are not mandatory for FMS production contracts. DoD policy is to obtain the same warranties on conformance to design and manufacturing requirements and against defects in material and workmanship as it gets for U.S. supplies.

(b) DoD normally will not obtain essential performance warranties for FMS purchasers. However, where contracting officer cannot separately identify the cost for the warranty of essential performance requirements, the foreign purchaser shall be given the same warranty that the United States gets.

(c) If an FMS purchaser expressly requests a performance warranty in the letter of acceptance, the Government will exert its best efforts to obtain the same warranty obtained for U.S. equipment. Or, if specifically requested by the FMS purchaser, obtain a unique warranty.

(d) The costs for warranties for FMS purchasers may be different from the costs for such warranties for the Government due to factors such as overseas transportation and any tailoring to reflect the unique aspects of the FMS purchaser.

(e) Ensure that FMS purchasers bear all of the acquisition and administrative costs of any warranties.

246.770-7 Cost-benefit analysis.

(a) In assessing the cost effectiveness of a proposed warranty, perform an analysis which considers both the quantitative and qualitative costs and benefits of the warranty. Consider—

(1) Costs of warranty acquisition, administration, enforcement, and user costs, and any costs resulting from limitations imposed by the warranty provisions;

(2) Costs incurred during development specifically for the purpose of reducing production warranty risks;

(3) Logistical and operational benefits as a result of the warranty as well as the impact of the additional contractor motivation provided by the warranty.

(b) Where possible, make a comparison with the costs of obtaining and enforcing similar warranties on similar systems.

(c) Document the analysis in the contract file. If the warranty is not cost effective, initiate a waiver request under 246.770-8.

246.770-8 Waiver and notification procedures.

(a) The Secretary of Defense has delegated waiver authority within the limits specified in 10 U.S.C. 2403. The waiving authority for the defense agencies is the Under Secretary of Defense (Acquisition and Technology). Submit defense agency waiver requests to the Director, Defense Procurement, for processing. The waiving authority for the military departments is the Secretary of the department with authority to redelegate no lower than an Assistant Secretary. The waiving authority may waive one or more of the weapon system warranties required by 246.770-2 if—

(1) The waiver is in the interests of national defense; or

(2) The warranty would not be cost effective.

(b) Waiving authorities must make the following notifications or reports to the Senate and House Committees on Armed Services and Appropriations for all waivers—

(1) *Major weapon systems.* For a weapon system that is a major Defense acquisition program for the purpose of 10 U.S.C. 2432, the waiving official must notify the Committees in writing of an intention to waive one or more of the required warranties. Include an explanation of the reasons for the waiver in the notice. Ordinarily provide the notice 30 days before granting a waiver.

(2) *Weapon systems not in mature full-scale production.* Although a waiver is not required, if a production contract for a major weapon system not yet in mature full-scale production will not

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include a warranty on essential performance requirements, the waiving of officials must comply with the notice requirements for major weapon systems.

(c) Departments and agencies shall issue procedures for processing waivers and notifications to Congress.

(1) Requests for waiver shall include—

(i) A brief description of the weapon system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program;

(ii) Identification of the specific warranty or warranties required by 246.770-2(a)(1) for which the waiver is requested;

(iii) The duration of the waiver if it is to go beyond the contract;

(iv) The rationale for the waiver (if the waiver request is based on cost effectiveness, include the results of the cost-benefit analysis);

(v) A description of the warranties or other techniques used to ensure acceptable field performance of the weapon system, e.g., warranties, commercial or other guarantees obtained on individual components; and

(vi) Exercise date of the warranty option, if applicable.

(2) Notifications shall include—

(i) A brief description of the weapon system and its stage of production; and

(ii) Rationale for not obtaining a warranty.

(3) Keep a written record of each waiver granted and notification and report made, together with supporting documentation such as a cost-benefit analysis, for use in answering inquiries.

[56 FR 36460, July 31, 1991, as amended at 61 FR 7750, Feb. 29, 1996]

PART 247—TRANSPORTATION

Sec.

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter I.

SOURCE: 56 FR 36466, July 31, 1991, unless otherwise noted.

Subpart 247.1—General

247.103 Transportation Documentation and Audit Regulation (TDA).

(b)(2) Appendix J of the Defense Traffic Management Regulation lists the carriers and carrier associations that have agreed to provide transportation